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13 Attorneys for Defendant  
 14 CALIFORNIA-AMERICAN WATER COMPANY, dba  
 15 CALIFORNIA AMERICAN WATER, a California  
 16 corporation

17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA  
 19 (SAN JOSE DIVISION)

20 SIERRA CLUB, a not-for-profit California  
 21 Corporation, and CARMEL RIVER  
 22 STEELHEAD ASSOCIATION,

23 Plaintiffs,

24 vs.

25 CALIFORNIA-AMERICAN WATER  
 26 COMPANY, dba CALIFORNIA AMERICAN  
 27 WATER, a California Corporation,

28 Defendant,

29 GARY LOCKE, SECRETARY OF THE  
 30 UNITED STATES, DEPARTMENT OF  
 31 COMMERCE, in his official capacity,  
 32 Defendant (Joinder under FRCP 19(a) as a  
 33 Necessary Party) and DR. JANE  
 34 LUBCHENKO, ADMINISTRATOR,  
 35 NATIONAL OCEANIC AND  
 36 ATMOSPHERIC ADMINISTRATION, in her  
 37 official capacity, Defendant (Joinder under  
 38 FRCP 19(a) as a Necessary Party) and  
 39 RODNEY McINNIS, REGIONAL  
 40 ADMINISTRATOR, SOUTHWEST REGION,  
 41 NATIONAL MARINE FISHERIES SERVICE,  
 42 in his official capacity, Defendant (Joinder  
 43 under FRCP 19(a) as a Necessary Party).

Case No. CV 09 2870 JF RS

**STIPULATION OF ALL PARTIES RE:  
 SUPPLEMENTAL SUBMITTALS ON  
 MOTION TO DISMISS AND CASE  
 MANAGEMENT; [PROPOSED] ORDER  
 THEREON**

Date: December 18, 2009  
 Time: 9:00 a.m.  
 Ctrm: 3  
 Judge: The Honorable Jeremy Fogel

1 Plaintiffs Sierra Club and Carmel River Steelhead Association ("Plaintiffs"), defendants  
 2 California-American Water Company dba California American Water ("CAW") and defendants  
 3 Gary Locke, Secretary of the United States Department of Commerce, Dr. Jane Lubchenko,  
 4 Administrator of the National Oceanic and Atmospheric Administration, and Rodney McInnis,  
 5 Regional Administrator, Southwest Region, National Marine Fisheries (collectively, the "Federal  
 6 Agency Defendants") hereby stipulate by and through their respective counsel of record as  
 7 follows:

### 8 RECITALS

9 WHEREAS, the hearing on CAW's pending Motion to Dismiss this action was continued  
 10 by the Court, following oral argument on September 18, 2009, to December 18, 2009, to allow for  
 11 the conclusion of the proceedings before the State Water Resources Control Board ("SWRCB") on  
 12 the proposed Cease and Desist Order against CAW in connection with WRO 95-10 and a true and  
 13 correct copy of the transcript of that oral argument and Order Continuing Hearing on Defendant's  
 14 Motion to Dismiss are collectively attached hereto as **Exhibit A** for the Court's convenience;

15 WHEREAS, the SWRCB adopted Cease and Desist Order WR 2009-0060 (the "CDO")  
 16 against CAW on October 20, 2009, which requires CAW to cease and desist its diversion of water  
 17 from the Carmel River in excess of its permitted rights in accordance with a prescribed schedule  
 18 and conditions;

19 WHEREAS, in November 2009, Petitions for Writ of Mandate were subsequently filed by  
 20 CAW and by the Monterey Peninsula Water Management District ("MPWMD"), respectively, to  
 21 challenge the CDO;

22 WHEREAS, on October 30, 2009, the MPWMD moved the Monterey County Superior  
 23 Court, ex parte, for a stay of the CDO and, on or about November 3, 2009, that court issued a  
 24 Minute Order granting a stay of the CDO pending the outcome in MPWMD's mandamus  
 25 proceeding (the "Stay");

26 WHEREAS, on or about November 13, 2009, the SWRCB filed an ex parte application for  
 27 an order dissolving the Stay, and opposition to that application has been filed by CAW and the  
 28 MPWMD, respectively;

1 WHEREAS, the Monterey County Superior Court has not yet ruled on the SWRCB's  
2 application for an order to dissolve the Stay;

3 WHEREAS, in this action, the Court previously set dates for an Initial Case Management  
4 Conference and ADR Deadlines, but it is the understanding of these parties that such dates were  
5 implicitly vacated by the continuance of the hearing on CAW's Motion to Dismiss, and the Court's  
6 prior order permitting the Federal Agency Defendants not to appear in this action pending the  
7 outcome of said Motion to Dismiss;

8 WHEREAS, the parties now wish to stipulate to the filing of Supplemental Requests for  
9 Judicial Notice in connection with the pending Motion to Dismiss, and further wish to confirm  
10 that the dates previously set for compliance with Federal Rule of Civil Procedure 26(f), Civil L.R.  
11 16.8(b) and ADR L.R. 3-5(b) and (c), Federal Rule of Civil Procedure 26(a)(1) and Civil L.R. 16-  
12 9, as well as the Initial Case Management Conference set for December 4, 2009, at 10:30 a.m.,  
13 have all been vacated pending the outcome of the Motion to Dismiss;

14 NOW, THEREFORE, the parties do hereby Stipulate as follows:

15 **STIPULATION**

16 1. That, on or before December 4, 2009, each party may file a Supplemental Request  
17 for Judicial Notice in connection with CAW's pending Motion to Dismiss, to request the Court to  
18 take judicial notice of documents subject to such notice and prepared on and after September 16,  
19 2009;

20 2. That the parties jointly request the Court to confirm that the dates previously set by  
21 the Order Setting Initial Case Management Conference and ADR Deadlines have been  
22 VACATED pending the outcome of CAW's Motion to Dismiss and that no further filings are  
23 required of the parties pending such outcome.

24 Dated: November 20, 2009

CALIFORNIA ENVIRONMENTAL LAW PROJECT

25 By: /s/ Laurens H. Silver

26 LAURENS H. SILVER  
27 Attorneys for Plaintiffs  
28 SIERRA CLUB and CARMEL RIVER  
STEELHEAD ASSOCIATION

1 Dated: November 20, 2009

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
SANDI L. NICHOLS  
JAN S. DRISCOLL  
PATRICK E. BREEN

4 By: /s/ Sandi L. Nichols

5 SANDI L. NICHOLS  
6 Attorneys for Defendant  
7 CALIFORNIA-AMERICAN WATER  
8 COMPANY, dba CALIFORNIA  
AMERICAN WATER, a California  
corporation

9 Dated: November 20, 2009

UNITED STATES DEPARTMENT OF JUSTICE

10 By: /s/ Jay Govindan

11 JAY GOVINDAN  
12 Attorneys for Defendants  
13 GARY LOCKE, SECRETARY OF THE  
14 UNITED STATES, DEPARTMENT OF  
15 COMMERCE, in his official capacity;  
16 DR. JANE LUBCHENKO,  
17 ADMINISTRATOR, NATIONAL  
18 OCEANIC AND ATMOSPHERIC  
ADMINISTRATION, in her official  
capacity; and RODNEY MCINNIS,  
REGIONAL ADMINISTRATOR,  
SOUTHWEST REGION, NATIONAL  
MARINE FISHERIES SERVICE, in his  
official capacity

19 Attestation Regarding Signature: This document is being filed electronically under my user  
20 ID and Password. Pursuant to General Order 45, section XB, I hereby attest that concurrence in  
21 the filing of this document has been obtained from each of the other signatories to this document.

22 I declare under penalty of perjury under the laws of the United States that the foregoing is  
23 true and correct and was executed on November 20, 2009, in San Francisco, California.

24 /s/ Sandi L. Nichols

25 SANDI L. NICHOLS

**[PROPOSED] ORDER**

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: 11/24/09



The Honorable Jeremy Fogel  
United States District Court Judge

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